

REFERENCE TITLE: **homeowner's associations; homestead exemption; foreclosures**

State of Arizona
House of Representatives
Forty-eighth Legislature
First Regular Session
2007

HB 2703

Introduced by
Representative Farnsworth

AN ACT

AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 33-1256, Arizona Revised Statutes, is amended to
3 read:

4 33-1256. Lien for assessments: priority: mechanics' and
5 materialmen's liens: applicability

6 A. The association has a lien on a unit for any assessment levied
7 against that unit from the time the assessment becomes due. The
8 association's lien for assessments, for charges for late payment of those
9 assessments, for reasonable collection fees and for reasonable attorney fees
10 and costs incurred with respect to those assessments may be foreclosed in the
11 same manner as a mortgage on real estate but may be foreclosed only if the
12 owner has been delinquent in the payment of monies secured by the lien,
13 excluding reasonable collection fees, reasonable attorney fees and charges
14 for late payment of and costs incurred with respect to those assessments, for
15 a period of one year or in the amount of one thousand two hundred dollars or
16 more, whichever occurs first. Fees, charges, late charges, monetary
17 penalties and interest charged pursuant to section 33-1242, subsection A,
18 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
19 are not enforceable as assessments under this section. If an assessment is
20 payable in installments, the full amount of the assessment is a lien from the
21 time the first installment of the assessment becomes due. The association
22 has a lien for fees, charges, late charges, other than charges for late
23 payment of assessments, monetary penalties or interest charged pursuant to
24 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
25 judgment in a civil suit for those fees, charges, late charges, monetary
26 penalties or interest from a court of competent jurisdiction and the
27 recording of that judgment in the office of the county recorder as otherwise
28 provided by law. The association's lien for monies other than for
29 assessments, for charges for late payment of those assessments, for
30 reasonable collection fees and for reasonable attorney fees and costs
31 incurred with respect to those assessments may not be foreclosed and is
32 effective only on conveyance of any interest in the real property.

33 B. A lien for assessments, for charges for late payment of those
34 assessments, for reasonable collection fees and for reasonable attorney fees
35 and costs incurred with respect to those assessments under this section is
36 prior to all other liens, interests and encumbrances on a unit except:

37 1. Liens and encumbrances recorded before the recordation of the
38 declaration.

39 2. A recorded first mortgage on the unit, a seller's interest in a
40 first contract for sale pursuant to chapter 6, article 3 of this title on the
41 unit recorded prior to the lien arising pursuant to subsection A of this
42 section or a recorded first deed of trust on the unit.

43 3. Liens for real estate taxes and other governmental assessments or
44 charges against the unit.

1 C. Subsection B of this section does not affect the priority of
2 mechanics' or materialmen's liens or the priority of liens for other
3 assessments made by the association. ~~The lien under this section is not~~
4 subject to THE HOMESTEAD EXEMPTION PROTECTION PRESCRIBED IN chapter 8,
5 ARTICLE 1 of this title APPLIES AGAINST ANY LIEN OF THE ASSOCIATION.

6 D. Unless the declaration otherwise provides, if two or more
7 associations have liens for assessments created at any time on the same real
8 estate, those liens have equal priority.

9 E. Recording of the declaration constitutes record notice and
10 perfection of the lien for assessments, for charges for late payment of those
11 assessments, for reasonable collection fees and for reasonable attorney fees
12 and costs incurred with respect to those assessments. Further recordation of
13 any claim of lien for assessments under this section is not required.

14 F. A lien for unpaid assessments is extinguished unless proceedings to
15 enforce the lien are instituted within three years after the full amount of
16 the assessments becomes due.

17 G. This section does not prohibit actions to recover sums for which
18 subsection A of this section creates a lien or does not prohibit an
19 association from taking a deed in lieu of foreclosure.

20 H. A judgment or decree in any action brought under this section shall
21 include costs and reasonable attorney fees for the prevailing party.

22 I. The association on written request shall furnish to a lienholder,
23 escrow agent, unit owner or person designated by a unit owner a statement
24 setting forth the amount of unpaid assessments against the unit. The
25 statement shall be furnished within fifteen days after receipt of the request
26 and the statement is binding on the association, the board of directors and
27 every unit owner if the statement is requested by an escrow agency that is
28 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
29 the escrow agent within the time provided for in this subsection shall
30 extinguish any lien for any unpaid assessment then due.

31 J. The association shall record in the office of the county recorder
32 in the county in which the condominium is located a notice stating the name
33 of the association or designated agent or management company for the
34 association, the address for the association and the telephone number of the
35 association or its designated agent or management company. The notice shall
36 include the name of the condominium community, the date of the recording and
37 the recorded instrument number or book and page for the main document that
38 constitutes the declaration. If an association's address, designated agent
39 or management company changes, the association shall amend its notice or
40 record a new notice within ninety days after the change.

41 K. Notwithstanding any provision in the condominium documents or in
42 any contract between the association and a management company, unless the
43 member directs otherwise, all payments received on a member's account shall
44 be applied first to any unpaid assessments, for unpaid charges for late
45 payment of those assessments, for reasonable collection fees and for unpaid

1 attorney fees and costs incurred with respect to those assessments, in that
2 order, with any remaining amounts applied next to other unpaid fees, charges
3 and monetary penalties or interest and late charges on any of those amounts.

4 L. This section does not apply to timeshare plans or associations that
5 are subject to chapter 20 of this title.

6 Sec. 2. Section 33-1807, Arizona Revised Statutes, is amended to read:

7 33-1807. Lien for assessments; priority; mechanics' and
8 materialmen's liens

9 A. The association has a lien on a unit for any assessment levied
10 against that unit from the time the assessment becomes due. The
11 association's lien for assessments, for charges for late payment of those
12 assessments, for reasonable collection fees and for reasonable attorney fees
13 and costs incurred with respect to those assessments may be foreclosed in the
14 same manner as a mortgage on real estate but may be foreclosed only if the
15 owner has been delinquent in the payment of monies secured by the lien,
16 excluding reasonable collection fees, reasonable attorney fees and charges
17 for late payment of and costs incurred with respect to those assessments, for
18 a period of one year or in the amount of one thousand two hundred dollars or
19 more, whichever occurs first. Fees, charges, late charges, monetary
20 penalties and interest charged pursuant to section 33-1803, other than
21 charges for late payment of assessments are not enforceable as assessments
22 under this section. If an assessment is payable in installments, the full
23 amount of the assessment is a lien from the time the first installment of the
24 assessment becomes due. The association has a lien for fees, charges, late
25 charges, other than charges for late payment of assessments, monetary
26 penalties or interest charged pursuant to section 33-1803 after the entry of
27 a judgment in a civil suit for those fees, charges, late charges, monetary
28 penalties or interest from a court of competent jurisdiction and the
29 recording of that judgment in the office of the county recorder as otherwise
30 provided by law. The association's lien for monies other than for
31 assessments, for charges for late payment of those assessments, for
32 reasonable collection fees and for reasonable attorney fees and costs
33 incurred with respect to those assessments may not be foreclosed and is
34 effective only on conveyance of any interest in the real property.

35 B. A lien for assessments, for charges for late payment of those
36 assessments, for reasonable collection fees and for reasonable attorney fees
37 and costs incurred with respect to those assessments under this section is
38 prior to all other liens, interests and encumbrances on a unit except:

39 1. Liens and encumbrances recorded before the recordation of the
40 declaration.

41 2. A recorded first mortgage on the unit, a seller's interest in a
42 first contract for sale pursuant to chapter 6, article 3 of this title on the
43 unit recorded prior to the lien arising pursuant to subsection A of this
44 section or a recorded first deed of trust on the unit.

1 3. Liens for real estate taxes and other governmental assessments or
2 charges against the unit.

3 C. Subsection B of this section does not affect the priority of
4 mechanics' or materialmen's liens or the priority of liens for other
5 assessments made by the association. ~~The lien under this section is not~~
6 subject to THE HOMESTEAD EXEMPTION PROTECTION PRESCRIBED IN chapter 8,
7 ARTICLE 1 of this title APPLIES AGAINST ANY LIEN OF THE ASSOCIATION.

8 D. Unless the declaration otherwise provides, if two or more
9 associations have liens for assessments created at any time on the same real
10 estate those liens have equal priority.

11 E. Recording of the declaration constitutes record notice and
12 perfection of the lien for assessments, for charges for late payment of
13 assessments, for reasonable collection fees and for reasonable attorney fees
14 and costs incurred with respect to those assessments. Further recordation of
15 any claim of lien for assessments under this section is not required.

16 F. A lien for an unpaid assessment is extinguished unless proceedings
17 to enforce the lien are instituted within three years after the full amount
18 of the assessment becomes due.

19 G. This section does not prohibit:

20 1. Actions to recover amounts for which subsection A of this section
21 creates a lien.

22 2. An association from taking a deed in lieu of foreclosure.

23 H. A judgment or decree in any action brought under this section shall
24 include costs and reasonable attorney fees for the prevailing party.

25 I. On written request, the association shall furnish to a lienholder,
26 escrow agent, unit owner or person designated by a unit owner a statement
27 setting forth the amount of any unpaid assessment against the unit. The
28 association shall furnish the statement within fifteen days after receipt of
29 the request, and the statement is binding on the association, the board of
30 directors and every unit owner if the statement is requested by an escrow
31 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
32 the statement to the escrow agent within the time provided for in this
33 subsection shall extinguish any lien for any unpaid assessment then due.

34 J. The association shall record in the office of the county recorder
35 in the county in which the planned community is located a notice stating the
36 name of the association or designated agent or management company for the
37 association, the address for the association and the telephone number of the
38 association or its designated agent or management company. The notice shall
39 include the name of the planned community, the date of the recording and the
40 recorded instrument number or book and page for the main document that
41 constitutes the declaration. If an association's address, designated agent
42 or management company changes, the association shall amend its notice or
43 record a new notice within ninety days after the change.

44 K. Notwithstanding any provision in the community documents or in any
45 contract between the association and a management company, unless the member

1 directs otherwise, all payments received on a member's account shall be
2 applied first to any unpaid assessments, for unpaid charges for late payment
3 of those assessments, for reasonable collection fees and for unpaid attorney
4 fees and costs incurred with respect to those assessments, in that order,
5 with any remaining amounts applied next to other unpaid fees, charges and
6 monetary penalties or interest and late charges on any of those amounts.